

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
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)	
Vs.)	Docket # 1721
)	
)	
Correctional Officer		
Miguel Lopez		
Employee # [REDACTED]		
Star #8277		
)	

DECISION

THIS MATTER COMING ON to be heard pursuant to notice before John R. Rosales, Board Member, and the Cook County Sheriff's Merit Board, the Board finds as follows:

Jurisdiction:

Miguel Lopcz (hereinafter "Respondent") holds a position as a Correctional Officer, which involves duties and responsibilities to the public; and
Each member of the Cook County Sheriff's Merit Board, hereinafter "Board," has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and
The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and
The Respondent was personally served with a copy of the Complaint and Notice of Hearing and appeared before the Board to contest the charges contained in the complaint; and
The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence.

Background

By complaint dated July 8, 2013, Sheriff Thomas J. Dart, sought the termination of Miguel Lopez. The complaint alleges:

-----That RESPONDENT then was absent from scheduled work shifts and the absences were unauthorized for a total of ninety-six (96) hours and in excess of eighty (80) hours between December 29, 2012 and April 13, 2013.

- a. That RESPONDENT was Absent/No Call ("ANC") on December 29, 2012; and January 1, 2, 3, 4, 5, 8, 9 and 10, 2013, for a total of nine (9) days (72 hours).

- b. RESPONDENT was Absent Late Call ("ALC") on February 20, 2013 and March 19, 2013 for a total of two (2) days (16 hours).
- c. RESPONDENT was Absent/No Sick Time ("NST") on April 13, 2013 (8 hours).

These alleged acts violated the Rules and Regulations and General Orders of the Cook County Sheriff Court Services Department, specifically:

GENERAL ORDER 3.8

III. REQUIREMENTS

A. Compliance with Laws and Regulations

- 4. Employees will comply with lawful department rules, written procedures, directives, bulletins, and verbal orders issued by the proper authorities.

D. Professional Conduct

- 7. Employees will utilize properly all benefit time leave categories.

SHERIFF'S ORDER 11.4.1.1

UNAUTHORIZED ABSENCE (Effective date: July 1, 2012)

I. POLICY

It is the policy of the Cook County Sheriff's Office (CCSO) to prohibit CCSO employees from incurring Unauthorized Absences. Unauthorized Absences exacerbate absenteeism problems and strain the operations and employees of the CCSO. CCSO employees receive benefit time and have a variety of leave options available to cover the need for short-term and long-term absences. Therefore, even if an employee is legitimately ill or has some other reasonable excuse for being absent, the employee must obtain an appropriate Authorized Status(es) prior to or immediately after the need for the absence(s).

VII. DISCIPLINARY PROCEDURES FOR EMPLOYEES WITH UNAUTHORIZED ABSENCE(S)

- C. **Disciplinary process for employees with a Rolling Calendar clause in their applicable CBA:**

The following shall apply to employees that incur an Unauthorized Absence(s) and have a CBA Rolling Calendar clause:

1. Rolling 365-day calendar:

- a. **Any employee under a CBA with a Rolling Calendar clause who incurs ten (10) day or eighty (80) hours of Unauthorized Absences (not to be confused with Occurrences) in a rolling 365-day period will be recommended to the Merit Board for termination.**

Furthermore, the RESPONDENT'S actions violated the Rules and Regulations of the County Sheriff's Merit Board, specifically:

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS

Article X, Paragraph B

No Police officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections or Deputy Sheriff of the Cook County Sheriff's Court Services Department will:

- 1. violate any law or statute of any State or of the United States of America**
- 2. violate any ordinance of a County of Municipal Government**
- 3. violate any of the general orders, special orders, directives, or rules and regulations of the Cook County Sheriff's Office.**

Issues Presented: Whether the actions of the Respondent violated any of the General Orders, Sheriff's Orders, and Rules and Regulations set forth above and what if any discipline is appropriate if a violation occurred.

Resolution of Issues Presented: The Merit Board finds that a violation of General Order 3.8 III A4, D7; Sheriff's Order 11.4.1.1 II, VII C1 A; and Article X paragraph B of the Rules and Regulations of the Cook County Sheriff's Merit Board occurred.

Evidence Presented: An evidentiary hearing in this matter was held on July 17, 2014 at the Cook County Administration Building, 69 West Washington Street, Room 1100, Chicago, Illinois. Present were Petitioners by counsel, Assistant State's Attorney [REDACTED] and [REDACTED], Assistant General Counsel. Also present was Respondent by counsel, [REDACTED]. Three witnesses testified for the Sheriff: [REDACTED] and [REDACTED]. Three witnesses testified for the Respondent: Miguel Lopez, [REDACTED] and [REDACTED].

Joint Exhibits 1 through 14 were admitted into evidence.
Respondents Exhibits 1, 2, 3, and 4 were admitted into evidence.

[REDACTED]
OPR Investigator [REDACTED] testified at the relevant times. Assigned to investigate the unauthorized absences of Respondent, Investigator [REDACTED] testified that she received a complaint register stating it was alleged that Respondent had 80 or more hours of unauthorized absences. In the course of her investigation, she interviewed Respondent, with union representation present. (Joint Exhibit 4) The Respondent read the charges and explained that [REDACTED] and at times, prevented him from calling in as he overslept. Investigator [REDACTED] further testified that no medical evidence was presented to substantiate Respondent's claim. After reviewing the absences in question and finding that the dates of the unauthorized absences were legitimate, the Office of Professional Review recommended termination.

Under Cross Examination, Investigator [REDACTED] testified that she was not aware that Respondent was on disability prior to December 29, 2012 and that time sheets only show when an employee is absent --and would not reflect if an employee was making an effort to see the County doctor.

[REDACTED]
Witness [REDACTED] testified at the relevant times. Superintendent [REDACTED] held the position of Attendance Review Unit supervisor from December 2012 to January 2013. Mr. [REDACTED] testified that he had a hand in drafting the Sheriff's order governing unauthorized absences, Order 11.4.1.0. (Exhibit 10), specifically documenting all options that at Sheriff's employee can get into an authorized status regarding their attendance. Superintendent [REDACTED] also testified to the amount of resources devoted to employees with attendance issues, including counseling and review of progressive discipline that is instituted after multiple infractions of the attendance policy. [REDACTED] recalled two counseling sessions with Respondent, with the second performed by himself.

At this point, counsel presented (Joint Exhibit 9) in which Respondent, as of February 24, 2012, communicated to the ARU unit that he did not intend to apply for authorized leave. [REDACTED] also reviewed the progressive discipline applied in the case of the Respondent, (Joint Exhibit 9)

with disciplinary action forms submitted on April 19th, 2012, June 20th, 2012 and August 10, 2012. (There was an additional disciplinary action form submitted on August 14, 2012, but that form was not signed by Respondent). Superintendent [REDACTED] reviewed a second option that an employee may utilize under the collective bargaining agreement: filing a grievance.

Respondent filed three grievances. All three grievances were denied, with a recommendation of suspension time in order to follow the progressive discipline procedure.

Under cross examination, Superintendent [REDACTED] testified that every unauthorized absence of one hour or more that is deemed actionable, triggers a meeting with the Attendance Review Unit. Meetings were confirmed on February 24, 2012; April 19, 2012; June 20, 2012 and August 14, 2012. Without official paperwork, Superintendent [REDACTED] was not in a position to confirm additional meetings that would correspond to Respondent's absences after August 10, 2012.

[REDACTED]
[REDACTED] Deputy Director of Human Resources, Cook County Department of Corrections, testified at the relevant times. Director [REDACTED] began with a confirmation of Respondent's unauthorized absences through her review of Respondent's time cards. (Joint exhibit 6) Respondent was absent no call on December 29, 2012; January 1, 2, 3, 4, 5, 8, 9, 10 of 2013 for a total of 9 days, 72 hours. Respondent was absent late call on February 20, and March 19 for an additional 16 hours. Respondent was absent, no sick time on April 13, 2013, adding an additional 8 hours of unauthorized absences for a total of 96 hours. Director [REDACTED] testified that Respondent did apply for disability benefits at a later date, but the application did not negate any part of the 96 hours of previous unauthorized absences. Respondent also applied for FMLA leave in April 9, 2013, but was denied due to lack of hours worked in the previous year.

Director [REDACTED] testified that there seemed to be pattern of abuse of time by the Respondent. After April 2013, there was a number of absences coinciding with his RDO (Regular Days Off), with absences immediately prior or subsequently after an RDO. The Director ended her testimony by confirming that all employees that reach 40 hours of unauthorized absences are sent a certified letter informing them of their unauthorized status and options available to in order to move to an authorized status. In her experience as Deputy Director of Personnel and having reviewed the documents related to the case, Director [REDACTED] testified that Respondent had in fact, violated Sheriff's Order 11.4.1.0 governing unauthorized absences.

Miguel Lopez

Officer Miguel Lopez, Respondent, testified at the relevant times. A Correctional officer of nearly ten years, Respondent testified that he was currently on disability. Respondent testified [REDACTED] August to October 2012. (Respondent Exhibit 1) soon after October of 2012, and [REDACTED] occurred from October to November of 2012. (Respondent Exhibit 2) Phone calls to the medical line were presented into evidence (Respondent Exhibit 3). Respondent testified that he wasn't

aware that his disability ended on December 28, 2012, and wasn't able to contact anyone from the medical line from Saturday December 29, 2012 through January 1, 2013. From January 2 through January 10, 2013, Respondent was ill and was not able to return to work. Respondent returned to the jail on January 11, 2013. For the dates of February 20, 2013, March 19, 2013 and April 13, 2013, Respondent testified [REDACTED] deprived him of his ability to work and call in on time. (Respondent Exhibit 4) In closing, Respondent agreed that the absences at the heart of the case were unexcused.

Under cross examination, Respondent testified that this is the first time anyone from the Sheriff's Department heard anything about a claim of [REDACTED]. Further, Respondent confirmed that on at least five occasions with the Attendance Review Unit, he was given all options for authorized leave.

[REDACTED]
[REDACTED] testified at the relevant times. A deputy Sheriff [REDACTED] also works in the first support program. [REDACTED]

[REDACTED]
Sergeant [REDACTED] testified at the relevant times. A former immediate supervisor of the Respondent, Sergeant [REDACTED] testified that the Respondent held to a good work ethic while under his watch.

Conclusions of Law: The Board finds that the testimony of multiple witnesses establishes that Respondent was absent from scheduled work shifts and that the absences were unauthorized in excess of eighty (80) hours between December 29, 2012 and April 13, 2013. Progressive discipline was enforced in response to Respondent's unauthorized absences earlier in 2012, resulting in six (6) suspension days before December 29, 2012.

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Merit Board finds that the Sheriff has proven by a preponderance of evidence that the Respondent did violate each and every general order, Sheriff's order and rules and regulations as set forth in the complaint filed herein.

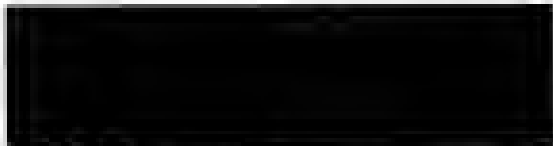
Order: Wherefore, based on the foregoing, it is hereby ordered that the Respondent, Miguel Lopez be separated from employment with the Cook County Sheriff's Department effective July 8, 2013.



James P. Nally, Chairman



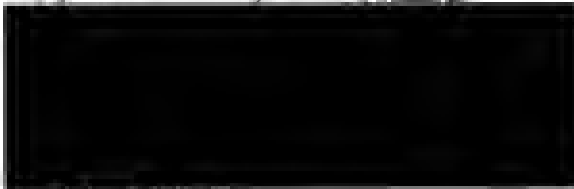
Kim R. Widup, Board Member



John R. Rosales, Board Member



Vincent T. Winters, Board Member



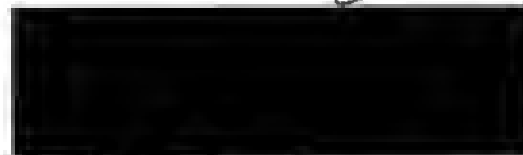
Brian J. Riordan, Board Member



Byron T. Brazier, Board Member



John J. Alicandro, Board Member



Jennifer Hae, Board Member

Dated: January 15, 2015